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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,695	08/21/2001	Terrance D. Kending	AD6372 US CIP3	7120

23906 7590 04/14/2004

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/933,695

Applicant(s)

KENDING, TERRANCE D.

Examiner

Christopher P Bruenjes

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,8-11 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-11 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***WITHDRAWN REJECTIONS***

1. The 35 U.S.C. 102 rejections of claims 1-5, 8-12, and 15 as anticipated by Wolf et al of record in the Office Action mailed October 27, 2003, Pages 2-4, have been withdrawn due to Applicant's amendments in the Paper filed February 5, 2004.

2. The 35 U.S.C. 103 rejections of claims 1-15 over Wolf et al in view of Tsukamoto et al of record in the Office Action mailed October 27, 2003, Pages 5-8, have been withdrawn due to Applicant's amendments in the Paper filed February 5, 2004.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-4, 8-11, and 15 are rejected under 35 U.S.C.

103(a) as being unpatentable over Wolf et al (US 2002/0197425

A1) in view of Rasmussen (USPN 6,455,164).

Wolf et al teach a laminate in combination with a tray (see abstract). The laminate comprises at least two films in which the inner film has heat shrinkage of 7% to 60% (p.3, paragraph 31). The outer film has no heat shrinkage or 5% less than the inner film, because the outer film has a heat shrinkage that is less than 10% (see abstract). Wolf et al further teach that the inner film has a heat-shrink attribute greater than that of the outer film (p.3, paragraph 31). The inner film comprises a polymer in the sealant layer of polyester (p.4, paragraph 43 and p.5, paragraph 56). The polyester is a polymer having at least 80% by weight polyethylene terephthalate polymer (p.8, paragraph 96). The film laminate further comprises an adhesive coating

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between the sealing layer of the inner film and the outer film represented by the tie layer (C) (p.4, paragraphs 36 and 39). The tie layer is an adhesive coating comprising polyurethane (p.8, Paragraph 99). The film laminate further comprises a barrier layer represented by barrier layer (G) adjacent the inner film (p.7, paragraph 77 and 82). The outer film is selected from the group consisting of nylon, polypropylene, polyethylene, ionomer, acid copolymer, ethylene vinyl acetate, polyethylene terephthalate, ethylene vinyl alcohol, polyvinylidene chloride, and coextruded combinations thereof (p.7, paragraphs 84 and 89 and p.8, paragraph 95 and 97).

Wolf et al fail to explicitly teach the specific polyurethane used as the adhesive tie layer. However, Rasmussen teaches that well-known and preferred polyurethane adhesive used as a tie layer in a laminate is Mor-Free 403A (col.3, 1.12-32 and col.5, 1.35-40), which is diphenylene isocyanate. One of ordinary skill in the art would have recognized that Mor-Free 403A or diphenylene isocyanate would be used as the polyurethane adhesive layer in a laminate, because Mor-Free 403A is a well-known adhesive for that purpose and one having ordinary skill in the art would have selected the appropriate adhesive based on the intended end result of the laminate.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to select Mor-Free 403A, which is diphenylene isocyanate, as the polyurethane adhesive used in Wolf et al, because Mor-Free 403A adhesive is a well-known and preferred solventless polyurethane adhesive used in laminates, as taught by Rasmussen, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended end use of the product. See *In re Leshin*, 125 USPQ 416.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

4. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1-5, 8-12, and 15 as anticipated by Wolf et al have been considered but are moot since the rejections have been withdrawn.

5. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claim 1-15 over Wolf et al in view of Tsukamoto et al have been considered but are moot since the rejections have been withdrawn.

#### **Conclusion**

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blackwelder et al (USPN 5,861,201).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489.


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The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB   
April 6, 2004

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

4/12/04